

NTSB Order No. EA-5792

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of September, 2016

Respondent.

Docket SE-19747

Respondent has filed a timely petition for reconsideration of NTSB Order No. EA-5772, issued on March 7, 2016, wherein we affirmed the law judge's order revoking respondent's Mechanic Certificate with Airframe and Powerplant ratings and Inspection Authorization. The law judge determined the Administrator proved respondent violated 14 C.F.R. §§ 43.9(a)(3), 43.12(a)(1), 43.13(a) and (b), and 43.15(a)(1) when respondent performed improper maintenance on a Cessna model CE-172E (hereinafter, N5683T), made false entries in N5683T's logbook and four Federal Aviation Administration (FAA) Forms 337,¹ and certified N5683T was airworthy

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following an annual inspection when the aircraft was not airworthy. Respondent contends we did not address or misinterpreted some of the issues respondent raised on appeal. We grant respondent's petition for reconsideration, in part.

Section 821.50 of our Rules of Practice (49 C.F.R. Part 821) governs the submission and our review of petitions for rehearing, reargument, reconsideration or modification of an order of the Board. Section 821.50(c) provides the Board will not consider arguments a party could have made on appeal or in reply briefs received prior to the Board's decision. In addition, § 821.50(d) states, "Repetitious petitions will not be entertained by the Board, and will be summarily dismissed."

1. *Respondent's Repetitious Arguments*

Respondent maintains he did not intentionally falsify FAA Form 337(I) for the engine and propeller modifications or the related aircraft logbook entry. In support of this contention, respondent repeats arguments he made in his appeal brief that Inspector Moore drafted block 8 of FAA Form 337(I), that the Supplemental Type Certificate (STC) was not available, and that an 80-inch propeller was approved for a seaplane configuration of N5683T.² Respondent further argues we should reconsider our March 7 Opinion and Order "in light of the overwhelming evidence of inaccurate, misleading, and unsubstantiated allegations" in the Administrator's complaint.³ In this regard, respondent presents a laundry list of contentions all of which he also repeats, practically verbatim, from his appeal brief.⁴ Lastly, respondent, again, argues that aluminum rivets were appropriate for his work on N5683T's firewall.⁵ We considered these arguments and found them unavailing; therefore, consistent with § 821.50(d), we decline to reconsider our finding concerning these issues.⁶

2. *Respondent's Allegation that the Board Misinterpreted Issues Raised on Appeal*

Respondent alleges we misunderstood issues relating to his logbook entries. First, respondent cites footnote 35 of our March 7 Opinion and Order⁷ and contends we confused Inspector Steffes' testimony concerning the certification basis for the Cessna 172E and the

involved the oil pressure and temperature kit, and Form 337(IV) involved the floatplane reinforcement kit.

² Pet. for Recon. at ¶¶ 3-6; Appeal Br. at 5-6, 9-12, 13-17.

³ Pet. for Recon. at ¶ 13.

⁴ *Id.* at ¶¶ 13-14; Appeal Br. at 7-11, 21-23, 27.

⁵ Pet for Recon. at ¶18; Appeal Br. at 22-23.

⁶ NTSB Order No. EA-5772 at 13-21.

⁷ Footnote 35 in NTSB Order No. EA-5772 reads:

³⁵ Tr. 119-120. Inspector Steffes further explained, "[t]he type of certificate number for a 172E is an A-12; the type certificate data sheet for a K model is A-7. Obviously there's enough of a difference between the two that it requires an entirely different type certificate." Tr. 123.

Cessna R172K for the tail cone section repair with his testimony concerning the difference between the Continental IO-360-G (G model) and IO-360-K (K model) engines.⁸ We determined respondent's incomplete and erroneous logbook entry concerning the type of engine aboard N5683T was material, and we cited Inspector Steffes' testimony that there were prominent differences between a G model and a K model engine.⁹ Footnote 35 correctly referenced pages from the hearing transcript containing Inspector Steffes' testimony about the differences between the G and K model engines;¹⁰ however, footnote 35 also incorrectly referenced pages from the hearing transcript containing Inspector Steffes' testimony about the differences in the fuselage for the Cessna 172E and the Cessna R172K.¹¹ We should not have included a citation to testimony about N5683T's fuselage in footnote 35 of our March 7 Opinion and Order.

Respondent next argues we "mistakenly understood that [r]espondent failed to perform or document Airworthiness Directives when no such allegation is contained in the complaint nor was such evidence put on at trial."¹² Our March 7 Opinion and Order stated the work respondent performed on N5683T "did not comply with the documents, such as STCs, airworthiness directives, and a Cessna drawing...."¹³ We should not have included "airworthiness directives" in the list the documents with which respondent's repairs were inconsistent.

Finally, respondent points out that we erroneously identified N5683T's tail section placard as the official manufacturer's placard based on our use of the term "data plate" in the Opinion and Order.¹⁴ We affirmed the law judge's determination the Administrator proved paragraph 16(d) of the complaint concerning respondent's installation of the tail cone, and in so doing, we referred erroneously to the tail section *placard* as the *data plate*.¹⁵ We, however, correctly concluded, "[T]he record establishes the work [respondent] completed was unacceptable because the accuracy of the listing of the correct aircraft model number on the *placard* for the tail cone is critical for maintenance considerations."¹⁶

To the extent our March 7 Opinion and Order contained the above-described errors, they were harmless and resulted in no prejudice to respondent. Our misplaced transcript citation, our inadvertent inclusion of "airworthiness directives" in the list of documents with which respondent's work did not comply, and our use of the term "data plate" rather than "placard"

⁸ Pet. for Recon. at ¶ 7.

⁹ NTSB Order No. EA-5772 at 14.

¹⁰ *Id.* at 14 n.35 (citing Tr. 119-20).

¹¹ *Id.* at 14 n.35 (quoting Tr. 123).

¹² Pet. for Recon. at ¶ 8.

¹³ NTSB Order No. EA-5772 at 14.

¹⁴ Pet. for Recon. at ¶ 9.

¹⁵ NTSB Order No. EA-5772 at 18. We also referred erroneously to the tail section *placard* as the *data plate* when we outlined respondent's arguments concerning the specific maintenance-related charges. *Id.* at 11.

¹⁶ *Id.* at 18 (Emphasis added).

concerning N5683T's tail cone installation were not critical to our determination the Administrator proved the corresponding allegations in the complaint. Therefore, respondent's arguments in this regard provide no basis for reconsideration of our March 7 Opinion and Order.

3. *Respondent's Allegation that the Board Did Not Address Issues Raised on Appeal*

Respondent asserts our March 7 Opinion and Order did not address his argument the Administrator's complaint failed to allege intentional falsification of FAA Form 337(I).¹⁷ While we did not explicitly address respondent's argument regarding the Administrator's pleading style, we found the complaint alleged the required elements of intentional falsification for each of respondent's false statements on FAA Form 337(I), and we determined the Administrator proved those allegations.¹⁸ The complaint "facially and plausibly allege[d] all of the key elements of an offense" that bears directly on respondent's qualification to hold a certificate, and it fulfilled the standards of notice pleading.¹⁹ Therefore, this argument is without merit and provides no basis for reconsideration of our March 7 Opinion and Order.

Respondent correctly states our March 7 Opinion and Order did not address four issues he raised in his appeal brief. First, we did not address respondent's argument that the law judge erred in finding respondent did not install the oil pressure restrictor fitting in accordance with STC SA02825NY because he was not charged with this violation.²⁰ We did not address respondent's allegation that the law judge erred in overruling a hearsay objection respondent raised concerning Inspector Steffes' testimony that respondent did not install the oil pressure and temperature gauge in plain view of the pilot.²¹ We also did not address respondent's allegation that the law judge erred in sustaining the Administrator's objection to an email from Cessna Structures concerning the use of aluminum rivets that respondent sought to introduce into evidence.²² Lastly, we did not address respondent's contention that the Administrator did not routinely enforce 14 C.F.R. § 43.9(a)(3) and that violations thereof did not warrant a significant sanction.²³ Because respondent made these arguments in his appeal brief but we did not address them in our March 7 Opinion and Order, we will do so at this time.

¹⁷ Pet. for Recon at ¶ 10; see also Appeal Br. at 9.

¹⁸ NTSB Order No. EA-5772 at 15-17; see also Complaint ¶¶ 11, 16(c) and (m), 19-20, 22.

¹⁹ Huerta v. Ducote, 792 F.3d 144, 154 (D.C. Cir. 2015); See also, Administrator v. Darby, NTSB Order No. EA-5521 (2010), in which the Board applied the principles of "notice pleading," which Black's Law Dictionary defines as "a procedural system requiring that the pleader give only a short and plain statement of the claim, showing that the pleader is entitled to relief, and not a complete detailing of all the facts." Black's Law Dictionary 1271 (9th ed. 2009) (citing Fed. R. Civ. P. 8(a)).

²⁰ Id. at ¶¶ 11-12; see also Appeal Br. at 17-18.

²¹ Pet. for Recon at ¶¶ 15-16; see also Appeal Br. at 18.

²² Pet. for Recon at ¶ 17; see also Appeal Br. at 22.

²³ Pet. for Recon at ¶ 19; see also Appeal Br. at 27.

With the exception of the law judge's evidentiary determination, to which we apply an abuse of discretion standard of review,²⁴ we review the following issues *de novo*.²⁵

As respondent asserts, the law judge held respondent intentionally falsified FAA Form 337(III) and the aircraft logbook entry indicating he installed the oil pressure and temperature kit in accordance with STC SA02825NY.²⁶ The Administrator's complaint, however, only alleged intentional falsification pertaining to respondent's certification he installed the oil pressure restrictor fitting, a component of the oil pressure and temperature kit, in accordance with STC SA00728SE, a different STC.²⁷ The complaint did not fulfill the standards of notice pleading because it did not allege intentional falsification, or the elements thereof, based upon respondent's noncompliance with STC SA02825NY when he installed the oil pressure and temperature kit. Consequently, the law judge's finding in this regard exceeded the allegations in the complaint. Therefore, we reverse the law judge's finding that the Administrator proved respondent intentionally falsified FAA Form 337(III) and the aircraft logbook entry for the oil pressure and temperature kit installation.²⁸

Respondent sought to introduce into evidence an email purportedly from a Customer Service Engineer at Cessna Structures stating that the company had no technical objection to respondent's use of aluminum rivets on the firewall of N5683T.²⁹ Respondent contends the law judge erred in sustaining the Administrator's hearsay objection to the exhibit. Our law judges have significant discretion in making evidentiary rulings. In this regard, we will only overturn a law judge's evidentiary ruling when the appealing party can show the law judge's ruling amounted to an abuse of discretion, and resulted in prejudice to the party.³⁰

²⁴ Administrator v. Peterfai, NTSB Order No. EA-5749 (2015).

²⁵ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

²⁶ Initial Decision at 445, 455.

²⁷ Complaint at ¶ 16(p).

²⁸ Due to our reversal of the law judge's finding in this regard, we need not address respondent's argument the law judge erred in overruling respondent's hearsay objection to Inspector Steffes' testimony that the oil pressure and temperature gauge was not installed in plain view of the pilot because the testimony concerned respondent's installation of the oil pressure and temperature kit.

²⁹ Tr. 214-15. The exhibit was marked R-28.

³⁰ See e.g., Administrator v. Leyner, NTSB Order No. EA-5732 at 4 n.19 (2014) (citing Administrator v. Walker, NTSB Order No. EA-5656 at 15 n.39 (2013); Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008)).

Our law judges must apply the Federal Rules of Evidence (FRE) to the extent practicable, which preclude the admission of hearsay testimony and evidence unless an exception applies.³¹ In the case *sub judice*, respondent acknowledged the email constituted hearsay but argued the hearsay exception for records of a regularly conducted activity (business records) applied because the email was a record he maintained in the course of his business.³² FRE 803(6) details several showings respondent must make, through the testimony of a custodian or other qualified witness, to authenticate a document as a business record.³³ Upon our review of the transcript and the email in question, we agree with the law judge that respondent did meet the strictures of that rule.³⁴ We also agree with the law judge that the email, dated March 30 2015, did not indicate that the information therein pertained specifically to respondent's use of aluminum rivets on N5683T that occurred more than two years prior.³⁵ We find the law judge's evidentiary ruling in this regard did not amount to an abuse of discretion.

We erroneously stated that the parties did not address on appeal the Administrator's allegation that respondent violated 14 C.F.R. § 43.9(a)(3) by failing to include an appropriate notation in the aircraft logbook to name the other technicians performing work on N5683T.³⁶ Respondent argued on appeal that the Administrator did not enforce 14 C.F.R. § 43.9(a)(3) on a routine basis and that a violation thereof did not warrant a significant sanction. It is well settled that the Administrator enjoys prosecutorial discretion; therefore, the Board will not review the frequency with which the Administrator pursues a violation of the Federal Aviation Regulations through an enforcement action.³⁷ We find no basis to reconsider our Order affirming the law judge's finding that respondent violated § 43.9(a)(3). With regard to the sanction for respondent's violation of § 43.9(a)(3); we determined the Administrator proved intentional falsification, in addition to affirming the law judge's finding that respondent violated § 43.9(a)(3). While we reverse the law judge's finding that respondent intentionally falsified FAA Form 337(III) and aircraft logbook entry pertaining to the oil pressure and temperature kit installation due to a defect in the Administrator's complaint, our remaining findings that the Administrator proved intentional falsification are undisturbed. In accordance with our jurisprudence, a single incident of intentional falsification is grounds for revocation of any and all certificates held by a respondent.³⁸ Therefore, we will not reconsider our Order affirming the Administrator's revocation of respondent's Mechanic Certificate with Airframe and Powerplant

³¹ Pub. L. No. 112-153, 126 Stat. 1159, § 2(a) (2012); see also 49 C.F.R. § 821.38; Fed. R. Evid. 802.

³² Tr. 215.

³³ See Fed. R. Evid. 803(6)(A)–(E).

³⁴ Tr. 215-16; see also Rejected Exh. R-28.

³⁵ Id.

³⁶ NTSB Order No. EA-5772 at 19 n.51.

³⁷ See Administrator v. Koch, NTSB Order No. EA-5571 (2011); Administrator v. Liotta, NTSB Order No. EA-5297 (2007).

³⁸ See Administrator v. Yerby, NTSB Order EA-5771 (2016).

ratings and Inspection Authorization.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's Petition for Reconsideration is granted, in part;
2. The law judge's decision is affirmed, in part;
3. The law judge's finding that the Administrator proved respondent intentionally falsified FAA Form 337(III) and the aircraft logbook entry for the oil pressure and temperature kit installation is reversed; and
4. The Administrator's emergency revocation of respondent's Mechanic Certificate with Airframe and Powerplant ratings and Inspection Authorization is affirmed.

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT AND WEENER, Members of the Board, concurred in the above opinion and order.